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SUBMITTED UNDER SEAL FOR *IN CAMERA* REVIEW

June 3, 2014

Hon. Richard Sullivan
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Enzo Biochem, Inc. v. PerkinElmer, Inc., No. 03cv3817
Enzo Biochem, Inc. v. Molecular Probes, Inc., No. 03cv3816
Roche Diagnostics GmbH v. Enzo Biochem, Inc., No. 04cv4046

Dear Judge Sullivan:

We represent Enzo Biochem, Inc. and its affiliates (“Enzo”) in regard to their disputes with their former counsel in these matters Greenberg Traurig, LLP (“GT”). We write briefly for the sole purpose of addressing the request, made *for the first time* in today’s letter from GT’s counsel to this Court, that Your Honor order Enzo (or PerkinElmer, Inc. (“PE”)) to pay otherwise accruing to Enzo from a settlement that Enzo and PE are prepared to execute, and put the remaining settlement funds into escrow – on the stated basis that this contingent fee is called for by the GT-Enzo engagement agreement. (The amount of the Enzo-PE settlement exceeds the maximum value of GT’s claim against Enzo.)

New York law is clear that the value of a charging lien is to be set at the fair and reasonable value of the attorneys’ services rendered, computed on the basis of *quantum meruit*. This Court should not summarily decide the fair value of the charging lien – without discovery, briefing, and a hearing. The GT-Enzo engagement agreement is but one of the factors this Court would take into account in a *quantum meruit* analysis. It does not matter whether that agreement speaks of an hourly rate, a contingent fee, or both. See *Universal Acupuncture Pain Servs., P.C. v. Quadrino & Schwartz, P.C.*, 370 F.3d 259, 263 (2d Cir. 2004) (“Recovery on a *quantum meruit* basis is called for even where the attorney discharged without fault was employed under a contingency fee contract” (citing *Smith v. Boscov’s Dep’t Store*, 192 A.D.2d 949, 950-51 (3d Dep’t 1993))); *Liddle & Robinson, LLP v. Garrett*, 720 F. Supp. 2d 417, 425 (S.D.N.Y. 2010) (a former attorney who “seeks unpaid legal fees pursuant to a blended contingency and hourly fee

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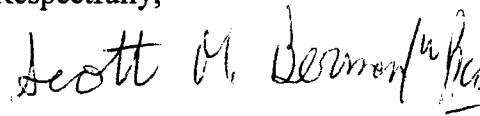
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agreement . . . is limited to seeking relief in *quantum meruit*"); *Pilitz v. Inc. Vill. of Freeport*, 2011 WL 5825138, at *7 (E.D.N.Y. 2011) (same); *Blunt v. N. Oneida Cnty. Landfill*, 145 A.D.2d 913, 914 (4th Dep't 1988) (holding that the trial court erred in "summarily fixing the compensation" of a withdrawn attorney "solely on the basis of a contingency fee agreement" because the "amount of the compensation must be fixed on a *quantum meruit* basis and the cancelled contract is but one element to be taken into consideration").

Simply put, the existence of a contingent fee arrangement in the GT-Enzo engagement agreement is not dispositive and does not automatically entitle GT to an award from Your Honor at this time.

Respectfully,

A handwritten signature in black ink that reads "Scott M. Berman". The signature is written in a cursive, slightly slanted style. There is a small mark at the end of the signature that looks like a stylized "B" or a flourish.

Scott M. Berman